IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 09/04/2003

Coram

THE HONOURABLE MR. JUSTICE M. KARPAGAVINAYAGAM
And
THE HONOURABLE MR. JUSTICE AR. RAMALINGAM

CRIMINAL APPEAL No.207 of 2000

1. Kumar @ Kumaravel
2. Kannan
3. Chakravarthi .. Appellants

-Vs-

State by
Inspector of Police,
Cuddalore O.T. Police Station. .. Respondent

Criminal Appeal against the Judgment dated 04.01.2000 made in S.C. No.85 of 1999 on the file of the Principal Sessions Judge, Cuddalore.

!For Appellant-1 : Mr.V. Gopinath, S.C. for
Mr.L.Mahendran

For Appellants 2&3: Mr. V. Parthiban,
Amicus Curiae

^For Respondent : Mr. E. Raja, Addl. P.P.

:JUDGMENT

M. KARPAGAVINAYAGAM, J.
A neatly planned and draftly executed murder of the deceased by using a mini lorry as the weapon of offence is the subject matter of the prosecution.

2. Kumar (A1) is the younger brother of Sivaraman, the first deceased, who brought him up, gave education and got employment as a Police Constable. The said Kumar (A1) due to family dispute hatched a conspiracy along with A2 Kannan and A3 Chakravarthy to commit the murder of the deceased Sivaraman, his elder brother and in pursuance of the conspiracy, a mini lorry was engaged which was driven by A2 Kannan on 18.8.1998 and dashed against the TVS 50 in which the first deceased Sivaraman was riding, as a result of which, the second deceased Sarathambal, his grandmother sitting as a pillion-rider as well as Sivaraman were thrown on the road with injuries, which resulted in the

instantaneous death. Initially, the case was treated as accident case and registered under Section 304-A I.P.C. Ultimately, truth that was a murder was found out during investigation. Then, all the three accused were charged and tried for the offences under Section 120-B and 30 2 I.P.C. A1 was convicted for the offences under Sections 120-B and 302 I.P.C. (two counts) and sentenced to undergo imprisonment for life concurrently. A2 was convicted for the offences under Section 120-B and 302 I.P.C. (two counts) and sentenced to undergo life imprisonment for each of the offences and the sentences were directed to run consecutively. A3 Chakravarthy was convicted for the offences under Sections 120-B and 302 (two counts) and sentenced to undergo life imprisonment for each of the offences and sentences to run concurrently.

3. The short facts leading to the conviction are as follows:
"(a) Kumar (A1) was working as a Police Constable attached to Nellikuppam Police Station. A2 Kannan and A3 Chakravarthy are lorry drivers known to each other. P.W.1 Ramalingam, the approver, is the resident of Karamanikuppam village. A2 Kannan and the approver Ramalingam belong to same village and as such, they are close friends. P.W.1 Ramalingam along with his wife P.W.6 Chitra is running a Tea stall at the village. P.W.1's brother died in a motor accident one year back. A1 Kumar being a Police Constable helped P.W.1 to get the body quickly after post-mortem. He also arranged to engage a counsel for getting compensation for the death of his brother. That was how both A1 and P.W.1 became close.

(b) The first deceased Sivaraman is the elder brother of A1 Kumar. After the death of their father, A1 was brought up and given education by the first deceased Sivaraman. He also helped him in getting the employment as Police Constable. He also arranged marriage for A1 with one Baby, the sister of his wife P.W.6 Chitra. Within a few years, misunderstanding arose between the said Baby and A1. After driving her out from his house, A1 who had developed illicit intimacy with one Sundari, another woman Police Constable married her. Baby was given shelter in the house of the first deceased, since she happens to be sister of his wife P.W.6. While she was in the house of the first deceased, she gave a complaint against A1, her husband for the offence under Section 498-A I.P.C. She also filed a petition seeking maintenance from him. In these cases, the first deceased was a witness. Aggrieved by that, A1 filed a suit in civil Court against the first deceased for partition and obtained injunction restraining the first deceased from alienating the properties.

(c) In the meantime, on the basis of the criminal cases, the first accused Kumar and his second wife Sundari were suspended from service by the Police Department. The first accused thought that the cases were filed against him by his wife only at the instance of his elder brother, the first deceased Sivaraman. Therefore, the first accused had strong grudge against the first deceased.

(d) Since P.W.1 became a close friend of A1, A1 told his family affairs to P.W.1 and also about the troubles being given to him by the first deceased and about his suspension. Then, the accused 1 and 2 and P.W.1 Ramalingam, the approver hatched a conspiracy to do away with the first

deceased by hitting him with a mini lorry while the first deceased Sivaraman was riding in the Moped and to make it appear as an accident.
(e) In pursuance of the said criminal conspiracy, P.W.1, the approver watched the movements of the first deceased. Then, on information given by him, A2 Kannan with the help of A3 Chakravarthy had a mini lorry from P.W.2 Mani on 18.8.1998. One Sankar was the driver of the mini lorry. On that day, A2 Kannan, driver Sankar and cleaner Balachander (P.W.3) were proceeding in the lorry slowly, waiting for the first deceased to come on the way with his Moped. Meanwhile, A2 and A3 found that Sivaraman, the first deceased was driving the vehicle along with pillion rider Sarathambal, the second deceased. This was informed to both A1 and P.W.1, who in turn asked them to hit against both. Then, at about 3.00 p.m., the mini lorry was parked near the Railway gate expecting the arrival of the deceased in the Moped.

(f) In the meantime, expecting danger at the hands of the first accused, the first deceased went to the Office of the Superintendent of Police, Cuddalore and presented a complaint Ex.P8 on the same day, i. e. on 18.8.1998 against A1 and others, seeking police protection. Thereafter, he was driving his TVS 50 proceeding towards his village along with the pillion rider, his grandmother Saradambal.

(g) Meanwhile, A2 gave brandy to the driver Sankar and after consumption, Sankar went to the top of the Cabin and slept. At that time, the first deceased along with the pillion rider, the second deceased, was driving the Moped. Then, A2 himself started the mini lorry and drove the same while A3 was following in another TVS 50 belonged to P. W.1. Then, the second accused drove the vehicle speedily and dashed against the Moped in which the deceased 1 and 2 were travelling. Due to the impact, both the deceased were thrown on the street with crush injuries, which resulted in their instantaneous death.

(h) P.W.3, the cleaner who was inside the lorry questioned the act of A2. In the meantime, Sankar, the driver on hearing the sound woke up and asked about the accident. Then, the mini lorry was driven to the Tea shop of P.W.1. There, Sankar, the driver, A2 Kannan and P. W.3 Balachander took food in the Tea shop. Then, A2 used the telephone in the house of P.W.1 after getting permission from P.W.6, the wife of P.W.1, phoned up to A1 and informed that they executed their plan and both of them died.

(i) Meanwhile, P.W.8 Ramalingam who witnessed the "accident" went to the police station and gave a complaint Ex.P5 to P.W.24, Head Constable. The case was registered for the offence under Section 304-A I. P.C. The printed F.I.R. is Ex.P22.
(j) P.W.25, the Inspector of Police, on receipt of message, took up the investigation and reached the scene of occurrence on the same day evening. He prepared observation mahazar and rough sketch. He seized M.O.3 TVS 50 driven by the first deceased. He conducted inquest over both the bodies. Exs.P26 and P27 are the inquest reports. Then the bodies were sent for post-mortem.

(k) P.W.17 Dr. Veerasigamani conducted post-mortem on the dead body of the

first deceased on 19.8.1998 at 11.50 a.m. He found crush injury on the head and skull bone fractured into multiple pieces and crush injury on the left leg. He opined in Ex.P14 post-mortem certificate that the deceased would appear to have died of shock and haemorrhage due to head injury.

(l) P.W.18 Dr.Karpagavalli conducted post-mortem on the dead body of the second deceased Saradhambal on 19.8.1998 at 11.15 a.m. She found crush injury on the skull, legs, hands and fracture in the right hip bone. She gave opinion in Ex.P16 post-mortem certificate that the deceased would appear to have died of shock and haemorrhage due to head injury and fracture of bones.

(m) P.W.2, who came back to his house on 20.8.1998 enquired P.W.3 cleaner as to the details of the accident. P.W.3 Balachander told him as to what really happened. Then, on 21.8.1998 at about 7.00 a.m., P.W.2 along with P.W.3 went to the police station and met P.W.25, the Inspector of Police and gave the statement. In pursuance of the said statement, the case was altered from Section 304-A I.P.C. to 302 I.P.C. against the accused 1 to 3 and sent the Express Report Ex.P28.

(n) At about 8.00 a.m., on being pointed out by P.W.3, P.W.25 arrested A2 Kannan in the presence of P.W.9 V.A.O. At about 11.30 a.m., he arrested A3 Chakravarthy. Thereafter, P.W.1's house was shown by A2 and A3. At abut 1.00 p.m., P.W.25 arrested P.W.1 Ramalingam, the approver and on his confession, he seized M.O.1 TVS 50 from him.

(o) On 22.8.1998, P.W.25 Inspector of Police gave a requisition to P.W.16, the Judicial Magistrate-III, Cuddalore to record the 164 statements of P.Ws.1 to 3. On 31.8.1998, P.W.25 gave another requisition to record the 164 statements of A2 and A3. Accordingly, all of them gave statements under Section 164 Cr.P.C. to P.W.16, the Judicial Magistrate on 2.9.1998. The statement of P.W.1 is Ex.P1. The statements of others including the statements of A2 and A3 are Ex.P12 series.

(p) In the meantime, P.W.25 came to know that A1 Kumar surrendered before the Judicial Magistrate-II, Chengleput. Therefore, on 1.9.1998, P.W.25 filed an application for police custody of A1 and accordingly, police custody was granted. After examination, he was produced before Court for judicial remand. He also filed an application before the Chief Judicial Magistrate, Cuddalore requesting to grant pardon to P.W.1 Ramalingam. After observing the formalities, on being satisfied with the statement given by P.W.1 Ramalingam, P.W.15, the Chief Judicial Magistrate tendered pardon to him on 9.11.1998 through Ex.P11 proceedings under Section 306 Cr.P.C.

(q) P.W.25 examined the other witnesses and collected the documents relating to enmity between the first deceased and the first accused, namely Ex.P8, the petition presented by the first deceased on the date of occurrence seeking police protection, Ex.P10, the complaint given by Baby against A1 under Section 498-A I.P.C., Ex.P18, the copy of the petition filed by Baby under Section 125 Cr.P.C. and Exs.P19 to P2 1, the plaint, written statement and the interim order passed by the civil Court in the suit filed by A1 against the first deceased.

(r) During the course of investigation, M.O.1 TVS 50 belonged to P.W.1, M.O.2 mini lorry belonged to P.W.2 and M.O.3 new TVS 50 belonged to the first deceased were sent for inspection. P.W.19 Motor Vehicles Inspector found damage in the vehicles M.Os.2 and 3 and gave inspection report Ex.P17.

(s) After completing the investigation, P.W.25 Inspector of Police filed the charge sheet against the accused for the offences under Sections 120-B and 302 I.P.C.

(t) During the course of trial, P.Ws.1 to 25 were examined, Exs.P1 to P32 were filed and M.Os.1 to 17 were marked.

(u) The accused were questioned under Section 313 Cr.P.C., with reference to the incriminating evidence available on record. The defence of the accused is one of total denial. They stated that the false case had been foisted against them.

(v) On appraisal of the materials produced by the prosecution, the trial Court convicted A1 to A3 for the offence under Section 120-B as well as 302 I.P.C. (two counts) and sentenced them to undergo imprisonment for life under each count. Aggrieved by that, a common appeal has been filed by all the three accused."

4. When the matter was taken up for final disposal, it was represented that the bundle has been handed over to respective parties long back by the erstwhile counsel on record. It is now noticed that A1 alone has engaged the counsel Mr.L.Mahendran and no counsel has entered appearance on behalf of A2 and A3. Therefore, this Court appointed Mr.V.Parthiban as Amicus Curiae to appear on behalf of A2 and A3.

5. Mr. V. Gopinath, the learned senior counsel representing the counsel on record and Mr. V. Parthiban, Amicus Curiae appearing for A2 and A3, both have taken us through the entire evidence and contended that the evidence placed by the prosecution against the accused is not reliable and further, the same is not sufficient to hold the accused guilty of the offences with which they were convicted.

6. The submissions made by Mr.Gopinath, the learned senior counsel appearing for A1, in brief, are as follows:

"P.W.1 approver has not passed twin tests as he cannot be held to be a reliable witness and his evidence is not corroborated by the material particulars. The acquaintance of P.W.1 with A1 was not clearly established as he himself stated that A1 was suspended by the Police Department even one year prior to the date of occurrence. Moreover, the details of the acquaintance with A1 were not mentioned in the statement given to P.W.25 by P.W.1. Further, the role played by P.W.1 as per his evidence in this case is so minimal, but the judicial confession of A2 and A3 would show that P.W.1 has taken the main role and as such, the evidence of P.W.1 cannot be believed. Furthermore, the conduct of P.W.1 in not informing to any other person regarding the incident is so artificial. According to P.W.1, he was arrested on 21.8.1998 early morning at 1.30 a.m., but the arrest was shown by P.W.25 only as 21.8.1998 at 1.30 p.m. and in view of the above contradiction, the

arrest cannot be believed. Once P.W.1 is held to be unreliable witness, the other materials including the confession of the coaccused (A2 and A3) projected to be the corroborative pieces would not be of any use for the prosecution. Even though P.W.3 was the eye witness, he did not choose to give complaint regarding the occurrence immediately either to his employer or to the police and as such, he also is an unreliable witness. Therefore, A1 is liable to be acquitted. The counsel would also cite the following decisions:

1) MAHABIR BISWAS v. STATE OF W.B.(1995 S.C.C.(Cri.) 308);
2) RAMPAL PITHWA RAHIDASS v. STATE OF MAHARASHTRA (1994 CRI.L.J.2320);

3) PEDDIREDDY SUBBAREDDI v. STATE OF ANDHRA PRADESH (1991 CRI.L.J.1391);

4) CHANDAN v. STATE OF RAJASTHAN (1988 CRI.L.J.842);

5) THULIA KALI v. STATE OF T.N. (1972 CRI.L.J.1296);

6) SHESHANNA v. STATE OF MAHARASHTRA (AIR 1970 SC 1330);

7) HARICHARAN KURMI v. STATE OF BIHAR (AIR 1964 SC 1184).

7. Mr.Parthiban, the Amicus Curiae counsel appearing for A2 and A3 would make the following contentions:
"The evidence of P.W.1, the approver cannot be relied upon as he has no direct participation in the occurrence. P.W.3 did not refer to his presence in the scene. In the absence of the evidence regarding participation of P.W.1, A2 and A3 cannot be convicted on the basis of the deposition of P.W.1, who simply implicated the other accused. The conduct of P.W.3 in not informing to the police about the occurrence immediately and merely accompanying the other accused to hotel and taking food would be so artificial. Having known about the fact that the driver Sankar was arrested on 19.8.1998 itself, he did not choose to inform his employer P.W.2 immediately. Therefore, his evidence is unreliable. Ex.P12 series, the confession statements recorded by P.W.16 from A2 and A3 would show that they are not voluntary and as such, the same cannot be used against them. Consequently, they are liable to be acquitted. In support of his contentions, the counsel would cite the decision in SARAVANABHAVAN v. STATE OF MADRAS (A.I.R.196 6 S.C.1278).

8. The Additional Public Prosecutor would submit in reply that the abundant materials available through the evidence of P.W.1 approver, the eye witness P.W.3 and the judicial confession made by A2 and A3 and other witnesses, namely P.Ws.5 and 6 would clearly prove that the murder had taken place by using the mini lorry in pursuance of the conspiracy hatched by them over the family enmity between A1 and the first deceased and as such, the conviction is legal. He has also cited the authorities in PRAKASH DHAWAL KHAIRNAR (PATIL) v. STATE OF MAHARASHTRA (2002(1) Crimes 18(SC), C. CHELLAPPAN v. STATE OF KERALA (A.I.R.1979 S.C.1761) and NARAYAN CHETANRAM CHAUDHARY v. STATE OF

MAHARASHTRA (A.I.R.2000 S.C.3352).

9. We have given our anxious consideration to the rival contentions urged by the counsel for the parties and also gone through the entire records.
10. To bring home the guilt of the accused, the prosecution has placed the following materials:
(1) The evidence of approver P.W.1, who speaks about the conspiracy along with other accused to commit the murder of the first deceased, and the details of the help rendered by him for the execution of the plan to A1 to A3.
(2) The evidence of P.W.3, the eye witness for the occurrence.
(3) Ex.P12 series, the judicial confession from A2 and A3 recorded by P.W.16 Judicial Magistrate.
(4) The motive and the threatening incident spoken to by P.W.7, the wife of the first deceased, the documents such as Exs.P10, P18, P19, P20, P21 and P31 showing the criminal cases and civil cases pending between the first deceased and A1 marked through P.Ws.13, 14, 21, 22 and 23 and Ex.P8 police protection sought by the first deceased against the first accused marked through P.W.13.
(5) The evidence of P.Ws.5 and 6 who speak about the arrival of A2 and others in a mini lorry involved in the incident to their Tea shop and by using their telephone A2 talked to A1 immediately after the occurrence.
(6) The arrest of A2 as identified by P.W.3 and A3 and on A1's information, the arrest of P.W.1 from whom M.O.1 TVS 50 was recovered.

11. According to the prosecution, the first deceased Sivaraman, the elder brother of the first accused brought him up, gave education to him and also got an employment for him in the Police Department. The first deceased married Kalavathi (P.W.7) and arranged for the marriage of A1 with her sister Baby in the year 1985. Initially, both the families lived together. There was no issue to Baby, the wife of A1 for a long time. In course of time, matrimonial relationship between Baby and A1 began to be bitter and A1 developed illicit intimacy with one Sundari, woman Constable working in the same police station. He also married her without the consent of the said Baby. After putting her to torture for dowry, he drove her out. The said Baby thereafter had to take shelter in the house of P.W.7, her sister Kalavathi. The first deceased, husband of P.W.7, advised A1 to take his sister-in-law back by disassociating from the said Sundari and to lead amicable life. Despite the said advice, A1 continued his marital life only with the second wife. A1 filed a suit for partition against the first deceased and obtained injunction. By this time, Baby preferred a police complaint against A1 and the said Sundari for the torture meted out to her. She also filed separate maintenance application against A1. In these cases, the first deceased was one of the witnesses. In pursuance of the criminal complaint, A1 and his second wife Sundari were suspended from service by the Police Department. Under those circumstances, A1 took the help of P.W.1 Ramalingam, approver, and A2 Kannan who are his friends and conspired to commit the murder of the first deceased by hitting him with a lorry to make it appear as an accident. In pursuance of the said conspiracy, at the instance of A1 and P.W.1, A2 and A3 hired a mini lorry from P.W.2 and after watching the movements of the first deceased, they went and parked the vehicle near the Railway gate and after noticing that the first deceased was coming in his TVS

50 along with the second deceased towards the village, A2 drove the vehicle and dashed against the Moped causing crush injuries on the bodies of both the deceased, resulting in their instantaneous death, thereby committed double murder.

12. The motive for the occurrence is that A1 had strong enmity against the first deceased, his elder brother, who helped his first wife Baby to file a criminal complaint against him due to which, he was suspended from service by the Police Department. It is not disputed that A1 got married to Baby, the sister of P.W.7 Kalavathi. The first deceased only arranged the marriage for A1 with his sister-in-law Baby. A1 had illicit intimacy with another Woman Constable through whom a child was born. That apart, Baby, the first wife was tortured and then driven out. Thereafter, Baby had to take shelter in the house of the first deceased, the husband of her sister. A1 did not heed to the advice of the first deceased to lead an amicable marital life with the said Baby. On the other hand, A1 filed a suit in O.S.No.282 of 1996 for partition and obtained injunction against the first deceased from alienation of the properties. Ex.P19 is the plaint filed by the first accused against the first deceased. Ex.P10 is the written statement filed by the first deceased. The injunction order obtained by A1 against D1 is Ex.P21. In the meantime, Baby filed a police complaint against A1 and his second wife Sundari for the offence under Section 498-A I.P.C. and Section 4 of the Dowry Prohibition Act. On the basis of this complaint, the first accused as well as his second wife Sundari were suspended on 13.2.1997. In this case, the charge sheet was filed on 3.2.1997 against A1 and his second wife Sundari. Ex.P10 is the charge sheet. That apart, Baby filed a maintenance application Ex.P18 under Section 125 Cr.P.C. against her husband A1. In both these cases, the first deceased was a witness. Apart from that, a case was registered for affray against both A1 and the first deceased under Section 160 I.P.C. under Ex.P31. The details of the criminal case and the suspension order in pursuance of the same have been spoken to by P.W.14 Woman Sub Inspector of the concerned Police Station. The factors relating to the pendency of civil and criminal cases have been spoken to by P.W.7 Kalavathi, the wife of the first deceased. As a matter of fact, these things have not been disputed by the first accused either in the cross-examination or in the statement given by him under Section 313 Cr.P.C. Thus, it is clear that A1 had strong motive against the first deceased since he thought that the first deceased was responsible for filing of the criminal cases against the first accused, in pursuance of which, A1 and his second wife were suspended.

13. With this background, we have to analyse the evidence adduced by the prosecution with reference to the conspiracy hatched by the accused. Regarding conspiracy, the prosecution has placed the evidence of P.W.1, the approver, the judicial confession Ex.P1 made by him and the judicial confession Ex.P12 series made by A2 and A3 and the evidence of P.W.7 and Ex.P8, the complaint given by the first deceased seeking police protection apprehending danger at the hands of the first accused.

14. According to P.W.1, he developed acquaintance with A1 who was working as a Police Constable, as he helped him whenever he went to the police station with regard to the problems that arose in the village. It is further

stated by him that his brother died in an accident one year back and A1 only helped him in getting the dead body after post-mortem and arranged a counsel for claiming compensation. In course of time, they became very close friends. In that context, on one day, the first accused told him about his family affairs and since he suffered very much at the hands of his brother Sivaraman and he was suspended only at his instance, he sought his help to murder him. Though P.W.1 advised him not to resort to such action as the matter could be settled through mediation, the first accused insisted that the first deceased must be done away with. Whenever P.W.1 came to court to attend the case for compensation, the first accused used to talk about his plan. At that time, A2 also joined with him. Then, A1 asked A2 to execute the plan of murdering the first deceased by hitting him with a lorry so that the case would be closed as an accident case. In pursuance of the said plan, there was an attempt to hit him with a vehicle, but fortunately, the first deceased escaped with some simple injuries. Two months later, again the similar plan was hatched. This time, A3 also joined. A1 gave Rs.500/- to P.W.1 and asked P.W.1 to lend his TVS 50 M.O.1 for four days so that the identity of the first deceased Sivaraman could be shown to the other accused. Though he was reluctant initially, P.W.1 was compelled to accept the plan as the first accused told him that he helped him a lot. Accordingly, TVS 50 and cash of Rs.1,000/- were handed over by P.W.1 to the other accused to identify the first deceased as well as to watch his movements to execute their plan. On 18.8.1998, the accused 2 and 3 came to A1 and P.W.1 and informed them that the first deceased was travelling in TVS 50 with one old woman and as such, they could not execute the plan. Then, A1 instructed them to hit and kill both of them. This instruction was given in the presence of P.W.1. Accordingly, the plan was executed causing death of both the deceased. After the occurrence, A2 came to the Tea shop of P.W.1 and phoned up to A1 about the execution of the plan. When P.W.1 phoned up to P.W.6 regarding the delay in getting the cheque for compensation from the Advocate, P.W.6 informed him that A2 came to the Tea shop with mini lorry after finishing the work entrusted to him.

15. P.W.5 is the brother-in-law of P.W.1. He was working as a Tea Master in the Tea shop run by P.W.1 and P.W.6. According to him, A2 Kannan, P.W.3 Sundar and one Shankar came to the Tea shop on 18.8.1998 at 4.00 p.m. and A2 obtained permission from P.W.6 Chitra to phone up to A1 Kumar and then phoned up.

16. P.W.6 Chitra also would state that her husband P.W.1 had close acquaintance with A1 since her husband used to go frequently to the police station whenever the problems arise in the village. She also stated that A1 only helped P.W.1 in filing the case for compensation. She further mentioned the phone number of A1 as 29131. According to her, on 18.8.1998, A2 with mini lorry came there and got her permission to phone up to A1.

17. P.W.7 Kalavathi is the wife of the first deceased. According to her, on one day, when she went to court along with the first deceased to attend the criminal case filed by her sister Baby, A1 heckled her husband/first deceased by stating that he would not come to the court on the next hearing and he would be run over by a lorry. She also stated that she was earlier informed by her husband that an attempt was made to hit him by a

lorry and fortunately, he escaped. Apart from that, the first deceased was beaten by the hirelings engaged by the first accused. According to her, on the date of occurrence, she went to the court along with her sister Baby. The first deceased came to the court in his TVS 50 along with his grandmother Saradhambal. After leaving her in the court, he went to the Superintendent of Police and presented a petition Ex.P8 seeking police protection from the hands of the first accused who made several attempts to kill him.

18. Ex.P8 is an important document in this case. The same has been marked through P.W.13 who is the Section Superintendent working in the Office of the Superintendent of Police. According to him, the first deceased came to the Superintendent of Police and presented in person the complaint Ex.P8 on 18.8.1998. He also identified the signature of the Superintendent of Police which was put on 18.8.1998. The same has been forwarded by the Superintendent of Police to the Inspector of Police for taking appropriate action against A1. According to P.W.25, the Inspector of Police, that he received Ex.P8 for taking appropriate action against A1 on 20.8.1998 along with the endorsement Ex.P9. Thus, the evidence of P.W.7, P.W.13 and P.W.25 would make it clear that the first deceased on 18.8.1998 went to the Superintendent of Police and presented a complaint against A1 and others seeking police protection.

19. The perusal of the complaint Ex.P8 would show that A1 by engaging rowdy elements attacked him earlier and several complaints had been given with reference to the said attack and further attempts were being made by him to eliminate him. It is also specifically stated in the complaint that no proper action had been taken in the earlier complaints, since A1 was a Constable and even after the complaints, the first accused had been taking steps by engaging the hirelings and rowdy elements to attack and cause his death even by hitting a lorry against him. The relevant portion in the complaint is as follows:
"fhty; epiyaj;jpy; g[fhh; bfhLj;jhy; moahl;fs; trkha; jhf;f tUfpd; whh;/ ntz;Lbkd;nw thfdj;ij vd;kPJ nkhj Kaw;rp bra;fpd;whh;/ gy bfhL: ukhd Ma[j';fs; bfhz;Lk;. moahl;fs; bfhz;Lk; vd; capUf;F nrjk; tpistpf;f Kaw;rp bra;fpd;whh;/"

20. Ex.P9 shows that on 18.8.1998, the complaint Ex.P8 was received by the Superintendent of Police. He himself made an endorsement directing the Inspector of Police to enquire into the matter and to take action against the first accused. Further, the complaint Ex.P8 would show that the earlier complaints were given with regard to the attempts to attack him on various dates and no action was taken. These things would reveal that attempts were earlier made to kill the first deceased by hitting with a lorry and on apprehending danger to his life at the hands of A1, he presented a complaint to the Superintendent of Police seeking police protection on the date of occurrence. As such, there is no difficulty in holding that the evidence relating to the aspect of conspiracy has been established by the prosecution.
21. Let us now come to the actual occurrence.
22. The only person who speaks to the occurrence is P.W.3, the cleaner who was travelling along with the accused on 18.8.1998 in the vehicle involved in the incident. Apart from the said witness, the prosecution has produced P.W.8 Ramalingam, who gave complaint Ex.P5 to the police stating that the mini lorry T.N.31 B 0435 at 3.30 p.m. came rashly and negligently without

blowing horn and dashed against the TVS 50 and sped away without stopping the vehicle, as a result of which, both rider as well as pillion rider died at the spot. Since he knew about the names of both the deceased as he happens to be their relative, he mentioned their names in the complaint. The names of the accused were not mentioned in Ex.P5. This complaint Ex.P5 was registered by the Head Constable, P.W.24 for the offence under Section 304-A I.P.C. on 18.8.1998 at 4.00 p.m. After registration, he sent the F. I.R. Ex.P22.
P.W.25 on receipt of the message, came to the scene at about 4.45 p.m. He recovered TVS 50 M.O.3 from the scene. Then, he conducted inquest. Then, he sent the dead bodies for post-mortem. On coming to know of the particulars about the driver of the vehicle, on 19.8.1998 at about 12.30 p.m., he arrested the driver Sankar and recorded his statement. On 21.8.1998 at about 7.00 a.m., P.W.2 Mani, the owner of the lorry and P.W.3 Sanker, cleaner who was travelling in the lorry during the incident came and appeared before P.W.25. Till then, the investigating officer P.W.25 was under the impression that this is a case of accident. But, on the information given by P.Ws.2 and 3, he came to know that this is not the accident, but a case of murder. On the basis of the written report given by P.W.2, P.W.25 prepared Express Report Ex.P28 altering the case into one under Section 30 2 I.P.C. P.W.2 produced his mini lorry M.O.2 which was recovered. Thereafter, at about 8 O' clock, he took the witnesses to the house of A2 and arrested him on being identified by P.W.3. Then, A2 was taken to the house of A3 and as identified by A2, A3 was arrested. On the basis of their statement, P.W.25 came to know that P.W.1 and A1 had played a major role in the incident. Hence, P.W.25 came to the Tea shop of P.W.1 at 1.00 p.m. and arrested him and in pursuance of his confession, he recovered TVS 50 M.O.1 from him. The arrest of the accused and P.W.1 had been made in the presence of P.W.9, V.A.O.
23. Considering the gamut of the case, on 22.8.1998 itself, P.W.25 sent a requisition to P.W.16, the Judicial Magistrate to record the 16 4 statements from P.W.1, A2 and A3. Accordingly, Exs.P1 and P12 series were recorded from them. P.W.25 took all steps to arrest A1. However, on 28.8.1998, the first accused surrendered before the Court at Chengleput. Thereafter, P.W.25 filed an application Ex.P30 for obtaining police custody. Accordingly, the police custody was granted for one day on 1.9.1998. After interrogation, he was sent for judicial remand. The investigation conducted on these days between 21.8.1998 and 1.9.1998 had clearly revealed that the deceased were done to death only at the instance of A1 to take revenge upon the first deceased, his elder brother as he was responsible for his suspension from service, with active assistance of P.W.1, A2 and A3.

24. As indicated above, P.W.8 would merely speak about the accident as he happened to be eye witness for the same as a bystander waiting at the Bus stop. But, P.W.3 is the only eye witness who speaks about what actually happened as he was inside the lorry as cleaner. The fact that the mini lorry M.O.2 has been used by A2 has been clearly established by the Trip Sheet marked as Ex.P32. According to P.W.2, the owner of the lorry, A2 and A3 came and asked the lorry for hire to take the goods of A2 to Vadalore. P.W.3 also would state that on 18.8 .1998 at about 12 O' clock, both A2 and A3 came in a TVS 50 and engaged the mini lorry for taking the goods from Cuddalore to Vadalore.

25. Ex.P32 shows the Register Number of the mini lorry and the details of the departing place and arriving place. It is also mentioned in the second column that the vehicle has been engaged by Kannan (A2) for taking the goods from Cuddalore to Vadalore. Furthermore, only on the information given by P.W.3, A2 was traced out by P.W.25.

26. According to P.W.3, A3 followed the mini lorry in a TVS 50 and in the mini lorry, driver Sankar, A2 Kannan and cleaner P.W.3 were there. At that time, A2 asked Shankar, the driver to stop the vehicle nearby so that he could drink Brandy. Accordingly, he stopped the vehicle near the Railway gate. After drinking Brandy, Sankar went to the top portion of the Cabin and slept. In the meantime, A2 got down from the vehicle and took TVS 50 from A3 and went to Cuddalore O.T. and after half-an-hour, he came and handed over the said TVS to A3 and A2 got into the lorry and began to start the vehicle. When P.W.3 asked A2 Kannan as to why he was to drive when the driver Sankar was available, A2 said that he was also a driver and he could drive better than the driver of the mini lorry. At that time, another TVS 50 driven by a man was crossing the mini lorry on the left side. An old lady was the pillion rider. When the said vehicle was going on the left side road, A2 drove the vehicle towards the left side allowing the TVS 50 to go in front and took a speed and dashed against the said TVS 50. Due to the impact, both of the deceased were thrown to the roadside. On hearing the sound, the driver Sankar woke up and asked A2 as to why he was driving rashly. At that time, A3 who followed the lorry in another TVS 50 belonged to P.W.1 came near the lorry and asked A2 as to whether he finished his job (nghl;L js;spahr;rh). A2 replied, "Yes". Thereafter, A2 took the lorry to Karamanikuppam village and parked in front of the Priya Hotel, belonged to P.W.1 and P.W.6. Then, he asked P.W.6 present there to allow him to phone up to A1 Kumar. After finishing their tiffin there, at about 4.30 p.m., Sankar took the lorry. A2 Kannan was dropped on the way. Then, they left the vehicle in the house of P.W.2, owner and went to their respective houses. According to P.W.2, he came back only on 20.8.1998. When he asked the cleaner P.W.3 as to how the accident took place, he gave the details as to what actually happened. Only thereafter, taking note of the serious situation, on 21.8.1998 at about 7.30 a.m., P.W.2 along with P.W.3 went to the police station and gave a written report to P.W.25 Inspector of Police.

27. The close scrutiny of the evidence of P.W.3 would clearly indicate that he was inside the lorry when the TVS 50 in which both the deceased travelled was hit by the lorry driven by A2. The fact that Sankar was asked to consume Brandy and made him to sleep in the upper portion of the Cabin and then on noticing both the deceased coming in the TVS 50 on the backside, A2 started the lorry and drove the same speedily and allowed the TVS 50 to go in front and then, went to left side and dashed against them, would clearly go to show that it was not an accident and it is a clear case of murder.

28. Furthermore, according to P.W.3, after the incident was over, the vehicle did not stop in spite of the question put by both P.W.3 and Sankar, driver and at that time, A2 informed A3 that he finished his job and thereafter, they went to the Tea shop of P.W.1 and talked to A1 over

telephone. The factor that P.W.3, A2 and Sankar came to the Tea shop of P.W.1 immediately after the occurrence, has been clearly spoken to by P.W.5 Tea Master and P.W.6, the wife of P.W.1. Both of them would state that A2 obtained permission to use her telephone to talk to A1. As indicated above, only on the information given by P. W.3, A2 was arrested and at the instance of A2, A3 was arrested and thereafter, on their statement, P.W.1 was traced.

29. It is true that P.W.3 did not report about the incident to the police nor to his employer immediately. But, he gives explanation that he got afraid since he came to know that Shankar was arrested on 19.8.1998 and only on 20.8.1998, he told about the incident to his employer P.W.2 as soon as he came back to his home. P.W.2 also would state that he went outside for his personal work and came back to his house only at 8.00 p.m. on 20.8.1998 and thereafter, he enquired with the cleaner who gave details. P.W.2 himself produced M.O.2 mini lorry in the police station on 21.8.1998. As per the report Ex.P17 given by the Motor Vehicle Inspector P.W.19, he found so many parts of the vehicle got damaged and front left side corner bumper dented. This would corroborate the evidence of P.W.3 that though the deceased went on the left side in TVS 50, A2 drove the vehicle to the left side and dashed against the TVS 50 driven by the first deceased. The reading of the deposition of P.Ws.2 and 3 would clearly reveal that P.W.3 was inside the vehicle as cleaner when the occurrence had taken place. As noted above, but for the information given by P.W.3, the involvement of A2 and A3 would not have been known to the investigating officer. Similarly, but for the statement of A2 and A3 , the involvement of P.W.1 and A1 would not have been brought to light.

30. In this context, the evidence of P.W.1, the approver assumes significance. According to P.W.1, he was also one of the conspirators. Though he was initially reluctant to participate in the conspiracy, he ultimately helped the other accused to execute the plan by handing over his TVS 50 and paying cash of Rs.1,000/- to the accused 2 and 3 for the sake of A1, who helped him earlier. The TVS 50, which was used by A3, who watched the movements of the first deceased and followed the lorry, was admittedly recovered from P.W.1. P.W.1 also would state that when he was with A1 to meet the lawyer in the evening, A1 informed his lawyer that he received the news through phone that his brother died in the accident and therefor e, he had to go. This is also one of the corroborative factors to support the evidence of P.Ws.5 and 6 that A2 came to the Tea shop and phoned up to A1. Therefore, the conjoint reading of P.W.3, P.W.5 and P.W.6 would reveal that P.W.3 had seen the occurrence and thereafter, A2 along with P.W.3 and Shankar, driver came to the Tea shop of P.W.1 either to inform P.W.1 or to intimate to A1 through telephone available in the house of P.W.1.

31. The main argument advanced by the counsel for the accused is that the evidence of P.W.1 is not reliable and his acquaintance with A1 has not been established as he himself admitted that A1 was suspended one year prior

to the occurrence and his statement was not in consonance with the judicial confession made by A2 and A3.

32. The following guidelines have been given in the judgments reported in 1994 CRI.L.J.2320, A.I.R.1970 S.C.1330, A.I.R.1966 S.C.1278, and A.I.R.2000 S.C.3352 (supra) with reference to the appreciation of the evidence adduced by approver:
(A) The rule of prudence imbedded in illustration (b) of Section 114 of the Evidence Act, strikes a note of warning to the courts that an accomplice does not generally deserve to be relied upon, unless his testimony is corroborated in material particulars.
(B) The first test of reliability of approver evidence is for the court to be satisfied that there is nothing inherently impossible in evidence. After that conclusion is reached as to reliabililty, corroboration is required.
(C) Ordinarily a court seeks for corroboration of the evidence of an approver before convicting an accused person on that evidence. Generally speaking this corroboration is of two kinds. Firstly, the court has to satisfy itself that the statement of the approver is credible in itself and there is evidence other than the statement of the approver that the approver himself had taken part in the crime. Secondly, after the court is satisfied that the approver's statement is credible and his part in the crime is corroborated by other evidence, the court seeks corroboration of the approver's evidence with respect to the part of other accused persons in the crime, and this evidence has to be of such a nature as to connect the other accused with the crime.
(D) Though the conviction of an accused on the testimony of accomplice cannot be said to be illegal, yet the Courts will, as a matter of practice, not accept the evidence of such a witness without corroboration in material particulars. For corroborative evidence, the Court must look at the broad spectrum of the approver's version and then find out whether there is other evidence to corroborate and lend assurance to that version.
(E) Where the statement of accomplice is vivid in explanation and inspired full confidence of the Court to pass the conviction of the accused and the corroborative evidence to the aforesaid statement left no doubt in the mind of the Court regarding the involvement of the accused in the commission of the crime, such conviction on the basis of testimony of accomplice would not be liable to be set aside.

33. In the light of the above guidelines, if we look at the evidence of P.W.1, the approver, there is no reason to hold that the evidence of P.W.1 is unreliable. On going through Ex.P1, the judicial confession given by P.W.1 and the deposition given by him, it is clear that he has given a consistent version with regard to the acquaintance with A1 and the conspiracy hatched by A1 along with the other accused. Though his evidence is attacked by stating that he had acquaintance with A1 only for one year, it is the clear evidence as noticed from the deposition of P.W.1 and P.W.6 that he was having a long acquaintance even before the death of his brother in the accident as he used to go to police station to solve the problems that arise frequently in the village with the help of A1 who was then working. As a matter of fact, the evidence of P.W.1 has not been seriously challenged. Nothing has been

culled out from P.W.1 as to why he has to speak falsely against A1. As a matter of fact, he was arrested on 21.8.1998 itself on the basis of the information given by A2 and A3 and his judicial confession was recorded on 2.9.1998 and only on 9.11.1998 P.W.15 Chief Judicial Magistrate granted pardon to him. Till then, he was an accused.

34. The only suggestion put to P.W.14 Woman Sub Inspector of Police who registered the case against A1 on the complaint of his first wife Baby is that P.W.14's husband, a retired D.S.P. had enmity against A1. This alleged enmity with the said D.S.P., who had already retired, has nothing to do with the acquaintance between P.W.1 and A1.

35. Though it has been elicited from P.W.1 and P.W.25 in the crossexamination with reference to contradictions relating to the acquaintance, it cannot be stated that P.W.1 had told the police in his statement that there was no acquaintance with A1 at all. Only on the basis of the confession given to the police officer relating to the help rendered by him to execute the plan hatched by them for the sake of A1, P.W.1 was sent to the Judicial Magistrate to record his confession under Section 164 Cr.P.C. and thereafter, pardon was tendered by P.W.15, the Chief Judicial Magistrate on being satisfied that his judicial confession was voluntary and his evidence would give additional strength to the prosecution. It is clear from the evidence of P.W.1 that P.W.1 himself would admit that he had no axe to grind against the deceased and he had gained nothing out of the murder of the deceased. In these circumstances, this Court on looking at the broad spectrum of the deposition of the approver (P.W.1) has to conclude that P.W.1 is a reliable witness.

36. It has been argued that P.W.1 would state that he was arrested at 1.30 midnight on 20/21.8.1998, whereas P.W.25 and P.W.9 would state that he was arrested on 1.30 p.m. on 21.8.1998. It is noticed that P.W.1 had stated in 164 statement also that he was arrested on 21.8.1 998 early morning at 1.30 a.m. If the statement of P.W.1 is accepted regarding the time of arrest, naturally, the evidence given by P.W.9 and P.W.25 regarding the time of arrest of P.W.1 cannot be said to be true. Even assuming that the time of arrest as stated by P.W.9 and P.W.25 is not correct, it would not in any way affect the case of prosecution. On the other hand, we can accept the evidence of P.W.1 as his version relating to the time of arrest also is consistent with his statement Ex.P1 made before P.W.16, the Judicial Magistrate. When his entire evidence appears to have a ring of truth, then we have to look into the other materials in order to find out whether those materials would corroborate the version of P.W.1.

37. P.W.1's version that earlier attempt to attack and kill the first deceased was made has been corroborated by the evidence of P.W.7, the wife of the first deceased. As discussed above, those things have been clearly mentioned in Ex.P8, the complaint presented by the first deceased on 18.8.1998, the date of occurrence to the Superintendent of Police. This has been spoken to by P.W.13 also. After the occurrence was over, A2 Kannan along with Sankar, driver and P.W.3 came to the Tea shop of P.W.1 and phoned up to A1 by using the telephone in the house of P.W.1. This has been spoken to by

P.Ws.5 and 6. Further, P.W.3 also would speak about this.

38. Apart from that, we have got the judicial confession made by A2 and A3 with reference to the conspiracy and the occurrence. It is true that the co-accused confession cannot be acted upon in the absence of any other substantive evidence.

39. It is settled law that the proper way to approach the confession of co-accused is, first, to marshal the evidence against the accused excluding the confession altogether from consideration and see whether, it it is believed, a conviction could safely be based on it. If it is capable of belief independently of the confession, then of course it is not necessary to call the confession in aid. But, cases may arise where the Court is not prepared to act on the other evidence as it stands even though, if believed, it would be sufficient to sustain a conviction. In such an event, the Court may call in aid the confession and use it to lend assurance to the other evidence.

40. In this case, even without the judicial confession of A2 and A3, the other materials available on record themselves would be sufficient to hold the accused guilty. However, by way of corroboration, this Court would consider the confession made by A2 and A3 in order to lend assurance to the other evidence. In that context, it can be stated that the details in the judicial confession also would lend the assurance to the other evidence available on record.

41. It is contended that the judicial confession given by A2 and A3 would show that P.W.1 had taken a major role, but P.W.1 would state in his confession and deposition that he had taken only a minor role. This contention cannot be accepted as P.W.1 himself stated in his evidence that A1 instigated other accused to execute the plan of murder hatched by them swiftly in the very presence of P.W.1 and as such, it cannot be stated that P.W.1 did not depose that he has taken any prominent role in the conspiracy and the consequential acts.

42. In view of the above discussion, we are constrained to hold that the prosecution has established its case beyond reasonable doubt and as such, the appeal has no merit and the same is liable to be dismissed.

43. At the end, it is pointed out that even though A1 was not at the spot, he has been wrongly convicted for the offence under Section 30 2 I.P.C. simplicitor on two counts. It was stated that A3 did not drive the vehicle and as such, he cannot also be convicted for the offence under Section 302 I.P.C. simplicitor. The Additional Public Prosecutor would state that the conviction on these accused can be suitably modified.

44. Accordingly, A1 is acquitted of the charge under Section 302 I. P.C. simplicitor (2 counts) and convicted for the offence under Section 120-B I.P.C. and sentenced to undergo life imprisonment. A-2 is convicted for the offences under Sections 120-B and 302 I.P.C. (2 counts) and sentenced to

undergo life imprisonment for each of the offences. A-3 is convicted for the offences under Sections 120-B and 302 read with 34 I.P.C. (two counts) and sentenced to undergo life imprisosnment for each of the offences. The sentences imposed on the accused are ordered to run concurrently.

45. With the above modification, the appeal is dismissed. This Court records its appreciation the services rendered by Mr.V.Parthiban, Amicus Curiae, who appeared for A2 and A3. The Tamil Nadu State Legal Services Authority is directed to pay Rs.1,500/- (Rupees One thousand and five hundred) as fees to him.

Index: Yes
Internet:Yes
MAM
To
1) The Prl. Sessions Judge, Cuddalore.
2) The Superintendent, Central Prison, Cuddalore.
3) The Public Prosecutor, High Court, Madras.
4) The Inspector of Police, Cuddalore O.T. Police Station.
5) The District Collector, Cuddalore.
6) The Director General of Police, Chennai.